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HUMAN RIGHTS COMMITTEE
Seventy-first session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Croatia

1. The Committee considered the initial report submitted by the Republic of Croatia (CCPR/C/HRV/99/1) at its 1912th, 1913th, 1914th and 1915th meetings, held on 28 and 29 March 2001, and adopted the following concluding observations at its 1923rd meeting, held on 4 April 2001.

A. Introduction

2. The Committee has examined the detailed and comprehensive report of Croatia, covering events since the country gained its independence in 1991. The Committee is grateful to the delegation of Croatia for the updated information provided to it in regard to recent developments subsequent to the submission of the report. It further commends the delegation for supplying it with a great deal of information about the legal situation in Croatia, but regrets that it was not provided with more information with regard to the practical implementation of Covenant rights.

B. Positive aspects

3. The Committee commends the State party for the serious attempt it has made to adopt a new rights-based Constitution that embodies internationally-recognized human rights and to enact a variety of legislation to enhance protection of such rights. It notes with satisfaction that the last parliamentary and presidential elections were conducted in a manner consistent with article 25 of the Covenant. Additionally, since these elections, significant amendments have

been introduced in the Constitution and legislation so as to clarify the separation of powers between the three branches of the State, in particular moving from an over-concentration of power in the executive branch to a more balanced form of parliamentary oversight of the executive and strengthening of the independence of the judiciary.

4. The Committee notes with satisfaction the State party's renewed commitment to cooperate with the International Criminal Tribunal for the Former Yugoslavia in order to ensure that all persons suspected of grave human rights violations during the 1991-1995 armed conflict are brought to trial.

5. The Committee commends the State party for the series of proposed amendments to its laws concerning selection and discipline of judges, the amendment of article 14 of the Constitution so as to ensure equality of all persons, the enactment of the Public Assembly Act significantly strengthening protection of the right to freedom of assembly, and the series of judicial decisions upholding constitutional rights, many of which are rights protected by the Covenant. In particular, it welcomes judgements holding inadmissible evidence obtained from suspects without the presence of a lawyer and striking down as unconstitutional criminal sanctions for criticism of high officials.

6. The Committee welcomes the constitutional provision abrogating the death penalty and commends the State party for its accession to the Second Optional Protocol to the Covenant.

C. Principal subjects of concern and recommendations

7. The Committee appreciates that under the Croatian Constitution international treaties, including the Covenant, have legal force superior to that of domestic legislation, and that most Covenant rights have also been specifically incorporated in the Constitution. However, the judiciary is not generally trained in international human rights law, with the result that in practice there is very little direct enforcement of Covenant rights.

The State party should intensify its efforts to educate judges and lawyers about the Covenant and its implications for interpretation of the Constitution and domestic legislation so as to ensure that all actions of the State party, whether legislative, executive or judicial, will be in accordance with its obligations under the Covenant.

8. While welcoming the amendment to article 14 of the Constitution that extended equality to non-citizens, the Committee remains concerned that other provisions continue to restrict certain rights to "citizens", leaving uncertain whether such rights are guaranteed to all individuals in the territory of the State party and subject to its jurisdiction, as required under article 2, paragraph 1, of the Covenant.

The State party should adopt necessary measures to clarify this situation.

9. The Committee is concerned that article 17 of the Constitution, dealing with a state of emergency, is not entirely compatible with the requirements of article 4 of the Covenant, in that the constitutional grounds justifying a derogation are broader than the "threat to the life of the nation" mentioned in article 4; that measures of derogation are not restricted to those strictly

required by the exigencies of the situation, and that non-derogable rights do not include the rights under article 8, paragraphs 1 and 2, article 11 and article 16 of the Covenant. Furthermore, the Committee is concerned that article 101 of the Constitution, which allows the President to issue decrees in "the event of a state of war or an immediate threat to the independence and unity of the State", has been employed so as to derogate de facto from Covenant rights in a manner that would seem to circumvent the restrictions in article 17 of the Constitution.

The State party should ensure that its constitutional provisions on a state of emergency are compatible with article 4 of the Covenant and that in practice no derogation from rights should be permissible unless the conditions of article 4 have been met.

10. While welcoming the establishment of specialized departments for the investigation of war crimes in the Ministry of the Interior, the Committee remains deeply concerned that many cases involving violations of articles 6 and 7 of the Covenant committed during the armed conflict, including the "Storm" and "Flash" operations, have not yet been adequately investigated, and that only a small number of the persons suspected of involvement in those violations have been brought to trial. Although the Committee appreciates the declared policy of the present Government of carrying out investigations, irrespective of the ethnic identity of those suspected, it regrets that it was not provided with detailed information on the number of prosecutions brought, the nature of the charges and the outcome of the trials.

The State party is under an obligation to investigate fully all cases of alleged violations of articles 6 and 7 and to bring to trial all persons who are suspected of involvement in such violations. Towards this end, the State party should proceed, as a matter of urgency, with the enactment of the draft law on the establishment of specialized trial chambers within the major county courts, specialized investigative departments, and a separate department within the Office of the Public Prosecutor for dealing specifically with the prosecution of war crimes.

11. The Committee is concerned with the implications of the Amnesty Law. While that law specifically states that the amnesty does not apply to war crimes, the term "war crimes" is not defined and there is a danger that the law will be applied so as to grant impunity to persons accused of serious human rights violations. The Committee regrets that it was not provided with information on the cases in which the Amnesty Law has been interpreted and applied by the courts.

The State party should ensure that in practice the Amnesty Law is not applied or utilized for granting impunity to persons accused of serious human rights violations.

12. The Committee notes the delegation's statement that the State party has a variety of measures at its disposal in its criminal law to combat the practice of trafficking of women into and through its territory, particularly for purposes of sexual exploitation. Despite widespread reports of the extent and seriousness of the practice, however, the Committee regrets that it was not provided with information on actual steps taken to prosecute the persons involved.

The State party should take appropriate steps to combat this practice, which constitutes a violation of several Covenant rights, including the right under article 8 to be free from slavery and servitude.

13. The Committee regrets that it was not provided with information regarding the number of persons held in pre-trial detention and the length of the periods for which they are held. It is therefore not in a position to assess whether the practice in the State party is in conformity with article 9 of the Covenant.

14. The Committee is concerned at reports about abuse of prisoners by fellow-prisoners and regrets that it was not provided with information by the State party on these reports and on the steps taken by the State party to ensure full compliance with article 10 of the Covenant.

The State party should take steps to ensure compliance with the requirements of article 10.

15. While noting recent efforts to simplify procedures and remove obstacles in the way of those wishing to return to Croatia, in particular displaced persons of Serbian ethnicity, the Committee remains concerned at the number of cases which are still outstanding and at the length of time these persons are having to wait for resolution of their cases.

The State party should ensure that no difficulties are put in the way of persons who left Croatia as a result of the armed conflict, in exercising their right, under article 12, paragraph 4, of the Covenant to return to their own country. The deployment of sufficient resources towards providing those persons, who have a right under the Covenant to return to Croatia, with accommodation must be a priority with the State party as it is essential to render enjoyment of this right meaningful.

16. The Committee is deeply concerned by the heavy backlog of cases awaiting hearing before the Croatian courts, particularly in civil matters. The delays in the administration of justice are apparently compounded by the application of the statute of limitations to suspend or discontinue cases that, for reasons often not attributable to the litigant in question, have not been brought on for hearing.

While acknowledging the State party's admission that the administration of justice is in urgent need of redress, the Committee stresses that the State party should ensure compliance with all the requirements of article 14 of the Covenant. To this end, it urges the State party to accelerate its reform of the judicial system, inter alia through simplification of procedures, training of judges and court staff in efficient case management techniques.

17. **While the right to freedom of expression is constitutionally guaranteed, the variety of provisions in the Criminal Code dealing with offences against honour and reputation, covering areas of defamation, slander, insult and so forth, are uncertain in their scope, particularly with respect to speech and expression directed against the authorities. The Committee is of the view that, having regard to past experience where these provisions have been used to seek to stifle political discourse, a general review of this area of the State party's law is necessary.**

The State party should work towards developing a comprehensive and balanced code in this area. This law should set out clearly and precisely the restrictions on the freedom of speech and expression and ensure that such restrictions do not exceed those permissible under article 19, paragraph 3, of the Covenant.

18. The Committee acknowledges the delegation's concession that its law on association, which was prepared at the time the State party was engaged in armed conflict, fails to provide for full freedom of association as guaranteed under article 22 of the Covenant. In the light of the Constitutional Court's judgement holding unconstitutional a variety of provisions in the Act, the Committee considers the time particularly appropriate to adopt a new comprehensive code providing to persons within the State party's jurisdiction full and comprehensive rights to freedom of association.

The Committee understands that the process of developing a new law on association is under way. The State party should proceed, as a matter of priority, with the enactment of the draft law to give full effect to its obligations under article 22 of the Covenant.

19. The Committee is concerned at the lack of a comprehensive law prohibiting discrimination in private-sector areas such as employment and housing. Pursuant to article 2, paragraph 3, and article 26 of the Covenant, the State party has a duty to protect persons against such discrimination.

The State party should promulgate a law prohibiting all discrimination and providing effective recourse for all persons against violations of their right to non-discrimination.

20. The Committee remains concerned about discrimination faced by members of the Serb ethnic minority in Croatia and requests the State party to provide it with information as to their position and on measures taken to prevent discrimination against them.

21. While recognizing that there has been some progress in achieving equality for women in political and public life, the Committee remains concerned that the representation of women in Parliament and in senior official positions, including the judiciary, still remains low. The Committee regrets that the delegation was not in a position to provide the Committee with information relating to the representation of women in the private sector.

The State party should make every effort to improve the representation of women in the public and private sectors, if necessary through appropriate positive measures, in order to give effect to its obligations under articles 3 and 26.

22. The Committee is concerned that the rights of members of ethnic, religious and linguistic minorities in national, regional and local representative and executive bodies, as well as their rights in social, cultural and economic fields of public and private life, should be more fully secured and articulated in the State party's legal framework, as the starting point to enhance the practical enjoyment by members of minorities of their rights under the Covenant. The Committee is also concerned that the Roma community is not accorded recognized minority status and that members of this community are particularly disadvantaged and suffer from discrimination.

The State party should ensure that all members of ethnic, religious and linguistic minorities enjoy effective protection against discrimination and are able to enjoy their own culture and use their own language, in accordance with article 27 of the Covenant.

23. The Committee is concerned at the apparently low level of awareness amongst the public of the provisions of the Covenant and the Optional Protocol procedure.

The State party should publicize the provisions of the Covenant and the availability of the individual complaint mechanism provided in the Optional Protocol. It should consider the means by which it can give effect to the Views of the Committee in the cases coming before it.

24. The State party should widely publicize the text of its initial report, the written answers it has provided in responding to the list of issues drawn up by the Committee and, in particular, these concluding observations.

25. The State party is asked, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding the investigation and prosecution of persons responsible for grave human rights abuses during the period of armed conflict (para. 10), the application of the Amnesty Law to persons accused of such violations (para. 11), the expedition of the return of displaced persons to Croatia (para. 15), the severe delays in the administration of justice (para. 16), the discrimination faced by minorities, in particular the Serb ethnic minority (paras. 20 and 22). The Committee requests that information concerning the remainder of its recommendations be included in the second periodic report to be presented by 1 April 2005.